



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

June 9, 2023

Re: FOIA Request NLRB-2023-001545

Dear Jason Blevins (Colorado Sun):

This is in response to your request, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received on June 5, 2023, in which you requested "Case# 27-RC-318772...05/25/2023 Initial Letter to Petitioner in R case*[,] NLRB – GC 05/25/2023[,] Initial Letter to Employer in R case* NLRB-GC[, and] [a]ny response from Vail Resorts/Employer/Crested Butte Mountain Resort." You assumed financial responsibility for the processing of your request in the amount of \$37.00.

We acknowledged your request on June 5, 2023. Your request for expedited processing is granted.

Your request is denied in part and granted in part, as explained below.

After conducting a search of the Agency's electronic casehandling system, NxGen, I have confirmed that *Vail Resorts, Inc.*, Case No. 27-RC-318772 is an open case pending an investigation and any hearing before the Agency's Region 27. As such, the records you requested are part of an investigative file in an open case before the Agency, and are thus exempt from disclosure pursuant to Exemption 7(A) of the FOIA. 5 U.S.C. § 552 (b)(7)(A). Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. See *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Therefore, given the open status of the requested case before the Region, any investigatory records in the case file, including any response from the employer Vail Resorts, would be withheld in full at this time pursuant to Exemption 7(A). In any event, in response to your specific request for any response from the employer, please be advised that the case file did not contain any such record at this time.

However, your request is granted to the extent that I have attached the two requested formal records in the case, the Initial Letters to the Employer and Petitioner, which are available to the public pursuant to NLRB FOIA regulations

regardless of the open or closed status of a case. Upon my review, redactions have been made to certain information in these records to protect the privacy interests of an individual named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

Please note that Exemption 7(A) protection is “temporal in nature.” *Citizens for Responsibility & Ethics in Wash. v. Dep’t of Justice*, 746 F.3d 1082, 1097 (D.C. Cir 2014) (citing *NLRB v. Robbins Tire*, 437 U.S. 214, 223-24 230-32 (1978)). As such, case file records may become disclosable, subject to applicable exemptions, after the case closes, that is, once a Board decision and/or court order issues, there has been full compliance with a settlement, or the case has otherwise been closed under Agency procedures. Accordingly, you may wish to file a new request at that time.

The status of this case can be tracked on the Agency website at www.nlr.gov by going to the Cases & Decisions tab, clicking case search, entering the case number in the search box and viewing the case page or by clicking the link here: <https://www.nlr.gov/case/27-RC-318772>.

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request. Given your placement as a news media requester, your request for a fee waiver is moot.

You may contact William T. Hearne, the FOIA Attorney-Advisor who processed your request, at (202) 273-0139 or by email at william.hearne@nlrb.gov, as well as the Agency’s FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Attorney-Advisor, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the Agency’s FOIA Public Liaison is:

Kristine M. Minami, FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570

Email: FOIAPublicLiaison@nlrb.gov

Telephone: (202) 273-0902

Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services

National Archives and Records Administration

8601 Adelphi Road-OGIS

College Park, Maryland 20740-6001

Email: ogis@nara.gov

Telephone: (202) 741-5770

Toll free: (877) 684-6448

Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt, Chief FOIA Officer

National Labor Relations Board

1015 Half Street, S.E., 4th Floor

Washington, D.C. 20570

Email: DLCFOIAAppeal@nlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ Synta E. Keeling

Synta E. Keeling

FOIA Officer

Attachment: (42 pages)